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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------------|
| 10/781,561 | 02/18/2004 | Sandra Hruza | BION/0013 | 9292 |
| 24945 | 7590 | 02/21/2008 | | |
| STREETS & STEELE 13831 NORTHWEST FREEWAY SUITE 355 HOUSTON, TX 77040 | | | EXAMINER LEVY, NEIL S | |
| | | | ART UNIT 1615 | PAPER NUMBER |
| | | | MAIL DATE 02/21/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,561

Applicant(s)

HRUZA, SANDRA

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3--42,44-46,48-52 is/are pending in the application.
- 4a) Of the above claim(s) 23,24 and 28-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14--22, 25-27,41,42,44- 46,48-50 is/are rejected.
- 7) ☒ Claim(s) 51 and 52 is/are objected to.
- 8) ☒ Claim(s) 1,3--42,44-46,48-52 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. 13 depends on now cancelled 2.

Claims 23, 24, 28-40 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/6/07.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1, 3-12, 14-22, 25-27, 41, 42, 44-46, 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over KUHN'S EPO 288633 and STATES, SR. et al 5574093 in view of VAN OOIJEN and COWAN et al US005207830A.

Kuhns describes treating animal litter, of the instant forms & materials – clays (powders), pellets, sawdust- with calcium phosphate (page 4, lines 31, 35-51) stearic acid & other fatty acids.. KUHN also treats bedding ([page 3] of sawdust (page 4, bottom) with oxygen sources, as Na formaldehyde bisulfite and Na bicarbonate (page 4, lines 28-56). Silica, clay-like material, and fatty acids, stearic, are added with or without other N or P sources. Examples indicate amounts of odor control substances to add are determined by effects. No mix of fatty acids, or peroxides, or Fe sulfate are evident.

STATES (summary) shows litter, such as that of Kuhns, is composted after use, . N sources, urea (col. 4, top) , the instant fatty acids, & peroxides are useful additives (col. 4, line 43-62), while COWAN shows these & K phosphate, ferrous sulphate heptahydrate are known additives used in litter.

See VAN OOIJEN of record, animal bedding is treated with fatty acids, the amounts applied determinable by applicator based on testing for ammonia reduction (Example 1). The ratio of acids and amounts to be applied would be within applicant's range, absent any objective showing by applicant of unobvious or unexpected effects as bedding in the same as applicant's- saw dust (page 3)..

Art Unit: 1615

The combination would be advantageous as many odors could be readily controlled.

It would have been obvious to a person of ordinary skill in the art of litter formation & use desiring to utilize odor control means, to use any of art recognized means, as of KUHNS & STATES , modified as desired to increase stability, dispersibility, compatability of ingredients, processing ease for composting & use

thereof as nutrient/fertilizer components mandating reconsideration in consideration of the 2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385.

Response to Arguments

Applicant's arguments filed 11/27/07 have been fully considered but they are not persuasive. Arguments are that the cited art is not directed at treating litter, but rather using litter, after it contains manure. The amendments have resulted in new search, and we find it is common to use the litter/manure, & , given the knowledge of the artisan, would be obvious to apply treatment as instantly claimed to the in situ treated litter. However, not all claims are seen as met or obvious over the art of record in this case.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1615

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
Art Unit 1615
